Tony's Trailer Service, Inc. and Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 135, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 25-RC-7414

August 21, 1981

DECISION AND CERTIFICATION OF REPRESENTATIVE

By Members Fanning, Jenkins, and Zimmerman

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered a determinative challenge in, and an objection to, an election held on June 20, 1980, and the Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs and hereby adopts the Hearing Officer's findings and recommendations.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 135, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that pursuant to Section 9(a) of the Act the foregoing labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, and hours of employment, and other terms and conditions of employment:

All full-time and all regular part-time parts department employees, including the parts co-ordinator employee, employed by the Employer at its Indianapolis Indiana, facility; BUT EXCLUDING all office clerical employees, all professional employees, all guards and all supervisors, and all other employees as defined in the Act.

Thornberry could fill. Contrary to the Employer's assertions, business was slow during this period, thus there was no basis for anticipating the need for another parts employee. Nor was there any evidence that the Employer anticipated that the two working parts employees would terminate their employment in the foreseeable future. It is true that, at the time of Thornberry's layoff, the Employer knew that its parts coordinator, Gilbert, would have to be replaced during the period of her maternity leave. Thornberry, however, had no experience in this skilled position, which was different from his job as parts person; thus, there was no basis for a reasonable expectancy that Thornberry would be recalled to the position of parts coordinator. Moreover, we observe that, although the Employer, when informing Thornberry of his layoff, brought up the subject of recalling Thornberry when an opening became available, it made no mention of the possibility of hiring Thornberry to train him to assume Gilbert's duties. Consequently, we find, in agreement with the Hearing Officer, that while the Employer apparently hoped to be able to recall Thornberry at an unspecified time, there is insufficient objective evidence to provide an adequate basis for finding there was a reasonable expectancy of recall on the eligibility date.

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was two votes for, and one against, the Petitioner; there was one challenged ballot.

² In the absence of exceptions, we adopt, pro forma, the Hearing Officer's recommendation that Petitioner's objection be overruled.

³ We agree with the Hearing Officer's recommendation that the challenge to the the ballot of Philip Thornberry be sustained. Thornberry was laid off on April 7, 1980, and remained in that status on April 27, 1980, the eligibility date. He returned to work for the Employer on June 16, 1980, prior to the election on June 20, 1980. The Board has held that the eligibility of employees in such circumstances rests upon whether the laid-off employee had a reasonable expectancy of recall at the time of the eligibility date for the election. We agree with the Hearing Officer's finding that Thornberry had no such expectancy of recall on April 27, 1980. Thus, the Employer told Thornberry at the time of his layoff that he would be recalled when an opening occurred or business improved. However, as more fully explicated by the Hearing Officer, from the date of the layoff on April 7 until the eligibility date of April 27, there was no basis for an expectation that an opening would occur in any job which